Remarks/Arguments:

Applicant's invention is a roofing material for automobile convertibles. This unique roofing material combines conventional yarns for the interior fabric with a type of yarn not used heretofore for the outer fabric of convertible tops. The yarn forming the outer fabric is a polymeric coated core yarn which provides a woven design appearance on the surface, and further provides improved weatherability, cleanability, insulation to sound, and resistance to abrasion. Secondly, the woven outer layer is not coated, impregnated, or laminated with a film, foil, or laquer, as is the case with conventional fabrics for convertible tops of recent years, which normally results in an objectionable appearance. This is exactly the problem addressed by the present invention. Since the outer layer is formed of the polymeric coated yarns, further protection for the woven fabric is not necessary. Rather, the outer layer is bonded to the inner layer by an adhesive layer which extends across and joins the entire surface between the inner layer and outer layer. It is this adhesive layer that not only bonds the outer and inner layer together, but also provides the waterproofing effect.

The Examiner has withdrawn all her previous rejections, but now cites new grounds for rejection. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,942,327 to Corry in view of U.S. Patent No. 6,539,898 to Gatto. Claims 9-10 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Corry in view of Gatto, and further in view of U.S. Patent No. 4,996,100 to Druckman et al. Finally, Claims 9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corry in view of Gatto, and further in view of U.S. Patent No. 6,557,590 to Swers et al.

Applicant herein amends Claim 1 to more clearly distinguish over the prior art.

Rejections Under 35 U.S.C. § 103

It is the burden of the Examiner to establish a prima facie case of obviousness when rejecting claims under 35 U.S.C. §103. In re Reuter, 651 F.2d 751, 210 USPQ 249 (CCPA 1981). The CAFC (and the CCPA before it) have repeatedly held that, absent a teaching or suggestion in the primary reference for the need, arbitrary modifying of a primary reference or combining of references is improper. The ACS Hospital Systems, Inc. v. Montefiore Hospital,

732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). In re Gieger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

Corry is directed to a coated fabric construction that addresses a problem of creating a sufficient bond between a flexible film coating and a fabric surface. Corry's attempt to solve this problem is in a unique woven fabric construction comprising high tensile strength continuous filaments in generally parallel arrangement in either the warp or weft direction, and twisted staple fiber yarns in the other (warp or weft) direction. When used in a lamellar structure, an outer fabric that is formed in the same manner comprises regenerated cellulose or other continuous filament yarns and twisted cotton yarns. While Corry is concerned with the aesthetic outward appearance of the visible fabric, he does not recognize the problem of deterioration that results from exposure of cellulosic or other conventional yarns to the elements. Hence, Corry's structure would eventually lead to the "rag top" problem, the earlier problem, to which Applicant's claimed invention is directed.

Applicant's convertible top is different. As described above, Applicant has solved the problem of deterioration and appearance. The woven outer layer is not coated, impregnated, laminated, painted, or lacquered with any film, foil, or sealant. Applicant's outer layer is formed of polymeric coated yarns (and perhaps polymeric effect yarns), thus further protection for the woven fabric is not necessary; i.e., as the outermost layer, it is directly exposed to the elements. This is one of the reasons that polymeric coated yarns are used.

The Examiner acknowledges that Corry fails to disclose an outer fabric layer containing a polymeric coated core yarn. For this teaching, she relies on Gatto. Applicant has discussed the differences between Applicant's invention and Gatto in previous communications with the Examiner. Gatto is not directed to convertible top fabrics. Gatto is directed primarily to a protective screen for horse blankets having an outer layer of mesh material to loosely cover the exterior of a horse blanket. Applicant agrees that Gatto teaches that the mesh outer protective layer is made with an extrusion coated polyester core yarn; however, Gatto's protective layer is not utilized in a convertible top fabric, nor is it used in a construction wherein an outer and inner layer are bonded together by a layer of adhesive that extends completely across the interface or surface between the two layers. The Examiner asserts that it would have been obvious, in view of Gatto, to use a core yarn having an extruded polymeric sheath in coated fabric construction of

Corry to produce an outer material which is lightweight and exhibits resistance to fading, abrasion, flame and mildew. Applicant respectfully disagrees that there is any such motivation. Again, Corry is focused on the problems attendant to bonding a film onto a fabric structure and nowhere suggests that other physical properties such as those suggested by the Examiner and as claimed by Applicant would be desirable. This is because Corry does not recognize the problem of deterioration in the outer layer where cellulosic and other conventional yarns are unprotected. Thus, there is no suggestion for a need to protect the yarns in an outer exposed layer. Further, modifying Corry's unique fabric structure with Gatto would destroy the desired "novel cooperation" of Corry's fabric and film coating, by changing the warp and weft structure of the fabric, violating the long standing holding that any modification that would destroy the invention of the reference cannot serve as a proper reference under 103(a). In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Further, Applicant respectfully submits that Gatto is non-analogous art. The test for non-analogous art is first whether the art is within the field of the inventor's endeavor and, if not, whether it is reasonably pertinent to the problem with which the inventor was involved. In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it logically would have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. With respect to the first element, Gatto is not within the field of Applicant's endeavor (convertible tops). Gatto is within the animal husbandry art and not within the art of composite fabric constructions. Secondly, Gatto would not have commended itself to Applicant because Gatto is addressing a substantially different matter. Applicant is addressing the problem of protecting the outer layer of a water repellant conventional top composite fabric, while maintaining the woven fabric appearance. Gatto, on the other hand, is dealing with a loose, mesh material which may be peripherally attached and placed over an animal blanket to provide a protective buffer against damage caused by impact and abrasion that might be experienced during use.

Lastly, with respect to the Examiner's proposed combination of Corry and Gatto, Applicant believes that the Examiner is simply piecing together references in an attempt to illustrate the various limitations of Applicant's claims. As the Federal Circuit has stated:

> It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992).

In view of the deficiencies in Corry, and its failure to provide an suggestion, teaching, or motivation for modification or combination, Applicant respectfully submits that the rejections of Claims 1-13 should be withdrawn.

Applicant respectfully submits that the pending application is now in condition for an immediate allowance with Claims 1-13, and such action is requested. If any matter remains unresolved, Applicant's counsel would appreciate the courtesy of a telephone call to resolve the matter.

Respectfully submitted,

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Date: May 23, 2006